

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Maria Simeone	Team: Team # 3	CCRB Case #: 200510359	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 08/31/2005 5:00 PM	Location of Incident: East 128th St and 2nd Avenue	Precinct: 25	18 Mo. SOL 2/28/2007	EO SOL 2/28/2007	
Date/Time CV Reported Sun, 09/04/2005 8:42 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sun, 09/04/2005 8:42 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT James Hynes	00638	922530	025 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Ilyasah Scott	04332	937509	025 PCT
2. POM Erik Delgado	10112	936457	025 PCT
3. POM Michael Mantilla	08412	937016	025 PCT
4. POM Lorenzo Jones	03231	936827	025 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT James Hynes	Abuse: Sergeant James Hynes forcibly stopped § 87(2)(b)	
B.SGT James Hynes	Abuse: Sergeant James Hynes threatened to seize § 87(2)(b)'s property.	

Synopsis

On August 31, 2005, Sergeant James Hynes conducted a car-stop on a motorcycle containing driver § 87(2)(b). Sgt. Hynes had been supervising a vehicle checkpoint and stopped § 87(2)(b) because he believed that § 87(2)(b) had crossed over pavement markings to avoid the checkpoint. In stopping § 87(2)(b), Sgt. Hynes grabbed § 87(2)(b)'s upper left arm as he drove past him causing § 87(2)(b) to briefly lose control of the motorcycle and incur bruises to his left forearm (Allegation A). § 87(2)(b) alleged that Sgt. Hynes did not verbally or manually command § 87(2)(b) to stop. § 87(2)(b) was issued summonses § 87(2)(a) 160.50. When § 87(2)(b) began taking pictures of the location and officers present, Sgt. Hynes allegedly threatened to confiscate § 87(2)(b)'s camera (Allegation B).

§ 87(2)(g), § 87(2)(b)

Summary of Complaint

CCRB Complaint Response Unit

§ 87(2)(b) called CCRB's complaint response unit on September 4, 2005, and filed this complaint (Enc. 3). In his narrative § 87(2)(b) stated that as he approached a police department roadblock on his motorcycle he began to slow down for the checkpoint when Sgt. Hynes grabbed § 87(2)(b)'s upper left arm, almost causing him to lose control of the motorcycle.

§ 87(2)(b) CCRB Statement

§ 87(2)(b) provided a verified statement to the CCRB on September 4, 2005 (Enc. 4). § 87(2)(b) a business owner, stated that at approximately 5PM on August 31, 2005 he was driving southbound on the FDR Drive toward the exit ramp that leads toward 128th and 2nd Avenue on his motorcycle. § 87(2)(b) went around the corner where the ramp leads to 128th Street where there were 3 lanes that merged into one lane and proceeded to go because the light was green. He noticed police officers to his left by the roadblock he was approaching. § 87(2)(b) proceeded to change lanes, going from the left lane to the right lane. § 87(2)(b) stated that he had been driving at approximately 5 mph for 50 feet when an officer (identified as Sgt. Hynes) grabbed his left arm, which caused him to lose control of the motorcycle for about 5 feet. § 87(2)(b) regained control and stopped the motorcycle.

§ 87(2)(b) asked Sgt. Hynes why he had been stopped and asked Sgt. Hynes why he had not verbally instructed him to pull over and stop rather than grab him. Sgt. Hynes stated that he had been signaling for § 87(2)(b) to stop, however, § 87(2)(b) stated that Sgt. Hynes had not done so. Sgt. Hynes did not specify how he had been signaling § 87(2)(b) to stop and told § 87(2)(b) that he stopped him because he was "trying to get away." § 87(2)(b) stated that traffic conditions in the area were heavy and that he had been travelling at a slow enough speed where Sgt. Hynes was able to approach the vehicle and grab § 87(2)(b). The force that Sgt. Hynes used left a large bruise on § 87(2)(b)'s left arm, which he later documented with photographs (Enc 5).

While waiting to be issued summonses § 87(2)(a) 160.50, § 87(2)(b) began taking pictures of the location and traffic conditions with his digital camera, at which point Sgt. Hynes threatened to take away his camera saying, "You can't take pictures here. You're not allowed to take pictures here. If you don't put it away I'll take it."

Other Documentation

Photographs of 128th Street and 2nd Avenue as well as the bruise § 87(2)(b) incurred, taken on August 31, 2005, are enclosed (Enc. 5). The photography illustrated a bruise on the inside of § 87(2)(b)'s left biceps that was approximately three inches long and two inches wide.

Results of Investigation

§ 87(2)(b) Witness Statement

§ 87(2)(b) provided a witness statement at the CCRB on September 21, 2005 (Enc. 6). § 87(2)(b) identified § 87(2)(b) as a witness during his statement and provided her contact information to the investigator, which was later confirmed by § 87(2)(b).

On August 31, 2005, § 87(2)(b) was driving on East 128th Street and 2nd Avenue. She stated that there was a lot of traffic coming around the curve and that there was a vehicle checkpoint where officers were pulling over a lot of people, including herself for being on her cell phone while driving. § 87(2)(b) was pulled over on the side of the road and being issued a summons when she saw a man driving on a motorcycle at less than 5-miles per hour. § 87(2)(b) had noticed the man because she had been admiring his motorcycle. § 87(2)(b) stated that § 87(2)(b) continued to "cruise" and suddenly Sgt. Hynes ran up to him and grabbed § 87(2)(b) by his left arm, causing § 87(2)(b) to momentarily lose control of his bike. § 87(2)(b) stated that § 87(2)(b) regained control of the bike and that after § 87(2)(b) had pulled over to the side of the road she approached him and asked if he had seen the officer signal for him to stop. § 87(2)(b) responded that he had not seen any signals to stop and had he, he would have complied. § 87(2)(b) did not see the officer signal him to stop either and told § 87(2)(b) to file a complaint against the officer and told him that she would be a witness. § 87(2)(b) asked § 87(2)(b) if he was hurt and he showed her his arm, which she stated was red but that the bruise had not formed yet. § 87(2)(b) and § 87(2)(b) had never met before this incident.

§ 87(2)(b) had a camera with him and began to take pictures of the area. § 87(2)(b) stated that the officer told § 87(2)(b) that he could not have a camera there and that he could take the camera away from him and to put it away. § 87(2)(b) was in her car during the incident.

§ 87(2)(b) stated that § 87(2)(b) was very calm and at no point questioned the officer or said anything to the officer that was rude or insubordinate. § 87(2)(b) left after she received her ticket.

Identification of Officers Interviewed

§ 87(2)(b), § 87(2)(g)

PO Scott was identified from the summonses, which she signed. During PO Scott's statement she identified Officers Mantilla, Jones and Delgado as working with her. Additionally, using the roll call, Officers Mantilla, Jones and Delgado were identified as being scheduled to work that assignment; their later testimony confirmed their involvement.

Sergeant James Hynes: Subject Officer

Sergeant James Hynes, a 7-year veteran of the NYPD, testified at the CCRB on October 3, 2005 (Enc. 7). Sgt. Hynes' memobook did not have any entries regarding the incident.

On August 31, 2005 Sgt. Hynes was working overtime to conduct a vehicle checkpoint with Field Training Unit officers at 128th Street and 2nd Avenue. Sgt. Hynes recalled that he saw a male motorcyclist cross over pavement markings at which time he signaled the motorcyclist to stop and pull over by extending his right hand palm facing upward and saying "stop". Sgt. Hynes stated that § 87(2)(b) ignored the command and continued travelling towards him. Sgt. Hynes stated that he did make eye contact with § 87(2)(b) when he extended his hand and screamed stop, however § 87(2)(b) "ignored his command." Sgt. Hynes then "grabbed" the motorist who then came to a stop and Sgt. Hynes directed him to get off the motorcycle. Sgt. Hynes grabbed the man's upper left arm with his left hand. Sgt. Hynes stated that § 87(2)(b) had been travelling about 5-10 mph and that there was very heavy traffic in the area.

After stopping § 87(2)(b) Sgt. Hynes continued to supervise the checkpoint by pulling over other cars, at which point § 87(2)(b) approached Sgt. Hynes carrying his duffel bag. Sgt. Hynes directed § 87(2)(b) to return to the sidewalk for his safety and if he refused to do so Sgt. Hynes told him that he could be subject to arrest and that if he was arrested his property could be seized.

Sgt. Hynes does not recall § 87(2)(b) taking pictures at the scene with a digital camera or telling him that he could take the camera from him if he did not stop taking pictures. Sgt. Hynes could not recall § 87(2)(b) complaining of any injury and could not recall any objects other than the duffel bag.

PO Ilyasah Scott: Witness Officer

Officer Scott testified at the CCRB on October 19, 2005 (Enc. 8). PO Scott read the memobook entries pertaining to the incident, which listed the summons numbers and what they were for.

PO Scott stated that she had been conducting a checkpoint when she saw a man on a motorcycle § 87(2)(b) approaching them on the highway. PO Scott stated that § 87(2)(b) changed lanes, cutting into traffic to avoid going towards the officers. She stated he was going regular speed when he exited the highway and increased his speed when he saw the officers at the checkpoint. PO Scott stated that Sgt. Hynes signaled for § 87(2)(b) to stop by making the halt hand motion (extending the hand, palm out) and verbally commanding him to stop. PO Scott could not recall how many times Sgt. Hynes had told § 87(2)(b) to stop. PO Scott testified that Sgt. Hynes walked across the road and again told § 87(2)(b) to stop. When § 87(2)(b) still did not stop, Sgt. Hynes grabbed his arm, effecting the stop.

During PO Scott's testimony she mentioned that she had been notified that there was a high incidence of robberies that occurred in the vicinity by motorcycle drivers, and that they were to pay attention to motorcycles as well as look for other vehicle infractions.

PO Scott stated that during the time it took the officers to write out the summonses, § 87(2)(b) took out a "camcorder", but PO Scott was not sure if he was recording them. PO Scott did not hear Sgt. Hynes or any other officer threaten to seize § 87(2)(b)'s camera.

PO Lorenzo Jones: Witness Officer

Officer Jones testified at the CCRB on October 25, 2005 (Enc. 9). PO Lorenzo did not have any memobook entries regarding the incident.

PO Jones stated that he was to the far left of the street and Sgt. Hynes was to the far right, across all three lanes of traffic. PO Jones approximated that he was 50 feet away from Sgt. Hynes and that there was heavy traffic at the location. PO Jones stated that he had been writing a summons when he heard Sgt. Hynes from across the street tell a motorist to "stop." PO Jones turned towards Sgt. Hynes and saw him reach out and grab hold of either the motorcycle or motorist's arm, he could not ascertain which from his vantage point. PO Jones stated that the first time he noticed § 87(2)(b) was when he heard Sgt. Hynes tell him to "stop," and saw the Sergeant. run alongside the motorcycle for a few feet before grabbing either § 87(2)(b)'s arm or the handlebar of the motorcycle. PO Jones did not see Sgt. Hynes manually signal because he was writing a summons and facing the opposite direction, but did hear Sgt. Hynes ask the motorist to stop twice.

PO Jones stated that they had been conducting a checkpoint at that location because there was a high incidence of vehicular accidents, but did not know anything about burglary patterns in the area.

PO Jones stated that § 87(2)(b) did have a camera and saw him taking pictures of the location but did not hear Sgt. Hynes threaten to confiscate the camera.

PO Michael Mantilla: Witness Officer

Officer Mantilla testified at the CCRB on October 28, 2005 (Enc. 10). PO Mantilla did not have any memo book entries regarding the incident.

On August 31, 2005 PO Mantilla he had been conducting a random checkpoint but had been looking for DWI's in particular. PO Mantilla stated that he had just obtained the ID of a motorist and that he was walking towards a RMP to run the information when he saw a man approach Sgt. Hynes with a duffel bag and a camera. PO Mantilla stated that he heard Sgt. Hynes tell the man to put his camera away. PO Mantilla stated that he continued to issue the summons and was not involved in the incident.

PO Mantilla stated that the first time he noticed the man was when he crossed the street to conduct the ID check and he did not see how the man was stopped. PO Mantilla stated that traffic was heavy and that the average speed of travel was about 5-10mph. PO Mantilla was not aware of a burglary pattern in the neighborhood committed by perpetrators on motorcycles and did not hear Sgt. Hynes threaten to confiscate the man's camera.

PO Erik Delgado: Witness Officer

PO Delgado testified at the CCRB on November 2, 2005 (Enc. 11). PO Delgado did not have any memo book entries regarding the incident.

PO Delgado had been conducting a car stop and issuing a summons two cars ahead of where Sgt. Hynes was. PO Delgado stated that he looked up from what he was doing and saw Sgt. Hynes running after a motorcycle. PO Delgado did not see at what point Sgt. Hynes tried to stop the motorcycle but stated that the motorcycle was stopped across the street from where PO Delgado was. PO Delgado did not hear Sgt. Hynes verbally command the motorist to stop. PO Delgado stated that he saw Sgt. Hynes run after the motorcycle and it looked to PO Delgado that Sgt. Hynes had been reaching across the motorist to turn off the motorcycle. PO Delgado stated that he saw Sgt. Hynes grab the motorist by his arm and that the motorist did stop but he is not sure who turned off the motorcycle.

PO Delgado did state that he saw the motorist taking pictures, possibly with a camera phone. PO Delgado stated that he did not hear Sgt. Hynes threaten to take away the motorists' camera and does not know which officers were involved in issuing the summons.

PO Delgado stated that he was aware of robbery patterns in the area but that he had not specifically been instructed to stop motorcycles. PO Delgado stated that there was a letter from the precinct informing officers to enforce motorcycle regulations.

Police Documentation

All sprint reports are enclosed (Enc. 12). The roll call is enclosed (Enc. 13) as well as summonses issued to § 87(2)(b) (Enc. 13).

Civilian Criminal Conviction History

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

CCRB History

Sgt. Hynes has never been disciplined pursuant to a CCRB investigation (Enc. 1). § 87(2)(b) has not filed previous CCRB complaints (Enc 2).

Conclusions and Recommendations

Identification of Subject Officer

§ 87(2)(g), § 87(2)(b)

Disputed and Undisputed Facts

Both the civilians and officers provided the same facts in regard to Sgt. Hynes using force in effecting the stop of § 87(2)(b) § 87(2)(b), § 87(2)(g)

§ 87(2)(b). Sgt. Hynes could only recall that § 87(2)(b) had a duffel bag. § 87(2)(b) and § 87(2)(b) were the only parties who testified that Sgt. Hynes threatened to confiscate the camera, although PO Mantilla testified that Sgt. Hynes told him to put it away.

Credibility

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation A: Sergeant James Hynes forcibly stopped § 87(2)(b)

As per NYPD Patrol Guide, officers are entitled to stop and detain a civilian when they have reasonable suspicion to believe that the person has committed or is about to commit a crime. § 87(2)(b), § 87(2)(g)

Allegation B: Sergeant James Hynes threatened to seize § 87(2)(b)'s property

§ 87(2)(b), § 87(2)(g)

Prior OATH and DCT decisions afford NYPD officers a wide latitude of threatening language that they can employ during street encounters. When their safety is in jeopardy, officers may use threats of force to gain compliance. When a civilian's behavior gives rise to probable cause for their arrest, officers may threaten

that civilian with arrest. However, courts will typically find threats of a gratuitous nature to constitute misconduct. § 87(2)(b), § 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: